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June 27, 2013

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VIA EMAIL & HAND DELIVERY

Jeff S. Jordan, Esquire
Supervisory Attorney
Office of the General Counsel
Federal Election Commission
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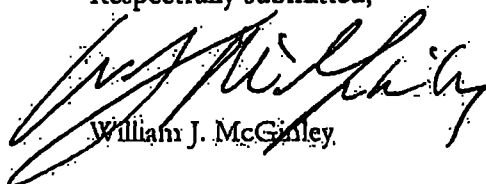
Re: MUR 6733
The Honorable Rodney Davis

Dear Mr. Jordan:

On behalf of our client, Representative Rodney Davis, please find attached the response to the Federal Election Commission's ("Commission") notification that a complaint was filed against him in the above-captioned matter.

Please do not hesitate to contact us with any questions.

Respectfully submitted,



William J. McGinley

Attachment

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FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

The Honorable Rodney Davis

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MUR 6733

RESPONSE TO THE COMPLAINT

Representative Rodney Davis, through counsel, hereby responds to the notification from the Federal Election Commission ("Commission") that a complaint was filed against him in the above-captioned matter. The complaint, filed by a Democratic political operative, must be dismissed for failure to allege facts that constitute a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("Commission") regulations. Specifically, the Office of Congressional Ethics ("OCE") Report cited as evidence by the complainant to support its erroneous allegations does not contain any factual allegations that Representative Davis violated the Act and Commission regulations. In fact, the OCE Report and its exhibits directly contradict the conclusory, politically-motivated allegations contained in the complaint. Accordingly, there is no factual or legal basis for the Commission to find reason to believe in this matter, and the Commission should dismiss the complaint, close the file and take no further action against Representative Davis.

The Act and Commission regulations provide that a federal candidate and his or her agents may not solicit or direct funds in connection with elections to federal office unless the funds are subject to the amount limitations, source prohibitions and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. In Advisory Opinion 2011-12, the Commission held that a federal candidate and his or her agents may solicit contributions to independent expenditure-only political committees ("IEOPCs") from individuals and other permissible sources so long as the amount solicited does not exceed \$5,000. If a federal candidate or his or her agent does not make a communication that satisfies the definition of "solicitation" under Commission regulations, he or

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she has not violated the Act or Commission regulations under FEC AO 2011-12 or any other Commission precedents. The definitions of "solicit" and "direct" cited by the complainant require the individual allegedly soliciting or directing to make such a communication with the individual or organization contemplating making the donation or contribution. 11 CFR §§ 300.2(m) & 300.2(n); *see also* 71 Fed. Reg. 13928 (2006) (providing that the definition of "solicit" "merely requires that whatever communication is used must contain a clear message asking, requesting, or recommending that *another person* make a contribution, donation, transfer of funds, or otherwise provide anything of value."); *Id.* at 13932 (providing that the definition of "direct" "consists of *providing the contributor* with the identity of an appropriate recipient for the contribution or donation.") (emphasis added). Accordingly, Commission regulations clearly require an individual to have communicated with a potential donor directly about his or her financial support of another organization for the communication to satisfy the definitions of "solicit" and/or "direct." Absent such direct communication, there is no factual or legal basis for concluding that an individual has solicited or directed a contribution or donation.

Contrary to the misguided allegations contained in the complaint, the OCE Report and its exhibits do not contain any factual allegations that Representative Davis solicited or directed any donations or contributions to the Committee for Primary Accountability ("CPA"). In fact, the OCE Report and its exhibits demonstrate the exact opposite: not one individual interviewed by the OCE states that Representative Davis solicited or directed any donations to CPA.¹ *See* OCE Report Representative 1 MOI at 2 (testifying that he did not know Rodney Davis until March 2012, after the Illinois primary election); OCE Report Representative Aaron Schock MOI at 2 (testifying that he

¹ Despite the conclusory allegations contained in the complaint, the CPA Managing Director and Development Coordinator each testified that Representative Davis was in contact with CPA merely to collect ministerial information such as when wire transfers were received by CPA or to receive the wiring instructions. These communications do not satisfy the definitions of "solicit" or "direct" under Commission regulations and do not provide a basis for a reason to believe finding.

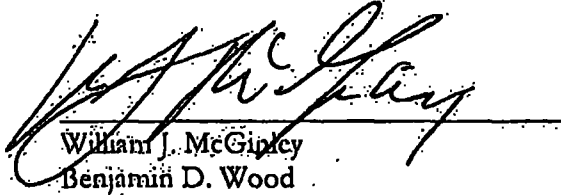
has no recollection of Mr. Davis asking him to contribute to CPA and is not aware of Mr. Davis asking anyone on his staff to contribute to CPA); OCE Report Representative Schock's Campaign Director MOI at 3 (testifying that she does not know Mr. Davis and never communicated with him); OCE Report Representative Schock's Chief of Staff MOI at 4 (testifying that Mr. Davis did not ask him to contribute to CPA); OCE Report Donor 1 MOI at 2 (testifying that he did not meet Mr. Davis until July 2012, after the 2012 Illinois primary election, and that he has not discussed CPA with Mr. Davis); OCE Report Donor 2 MOI at 2 (testifying that she did not discuss contributing to CPA with Mr. Davis); and OCE Report Lobbyist Donor 1 at 4 (testifying that Mr. Davis did not ask him to contribute to CPA).

Commission precedents hold that the burden does not shift to a respondent in an enforcement action merely because a complaint has been filed that fails to allege facts that constitute a violation. *See* MUR 4850 (Deloitte & Touche, LLP, et al.), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2. ("The burden of proof does not shift to a respondent merely because a complaint is filed."). These precedents apply with particular force here where an operative of the opposing political party files a complaint that is contradicted by the very evidence cited in the complaint itself.

If the Office of General Counsel references or develops information not cited in the Complaint in determining whether to recommend that the Commission find reason to believe in this matter, we must be given—and hereby respectfully request—an opportunity to review the additional information used by the OGC and to provide an appropriate response prior to the Commission's reason to believe vote. *See* Federal Election Commission, Request for Comment on Enforcement Process, 78 Fed. Reg. 4081 (January 18, 2013).

For all the foregoing reasons, there is no legal or factual basis for finding reason to believe against Representative Davis and the Commission must dismiss the complaint as against him, close the file, and take no further action.

Respectfully submitted,



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